

Honorable Robert Brutinel, Chief Justice, Chair  
Commission on Appellate Court  
Appointments, Petitioner  
1501 West Washington Street  
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

REVISED PETITION TO AMEND	)	
THE PROCEDURES FOR	)	Supreme Court No. R-20-0035
NOMINATIONS FOR THE	)	
INDEPENDENT REDISTRICTING	)	REPLY
COMMISSION	)	
_____	)	

Petitioner files this Reply in response to comments received from a number of Arizona news organizations, the League of Women Voters of Arizona, and others opposing certain changes to rules adopted in this matter on an emergency basis.

All comments received in this matter appear to address the same provisions in the rules; consequently, after review of the comments and consultation with some commenters, modifications were drafted to address the concerns raised in the comments. The proposed modifications to the rules as adopted in April are attached hereto for the court's consideration.

Respectfully submitted this 8th day of July, 2020.

BY: /S/  
Honorable Robert Brutinel, Chair  
Commission on Appellate Court Appointments  
1501 West Washington Street  
Phoenix, AZ 85007

**RULES OF THE SUPREME COURT**  
**XIII. PROCEDURES FOR NOMINATIONS**  
**FOR THE INDEPENDENT REDISTRICTING COMMISSION**

**(as adopted on an emergency basis April 3, 2020**

(language to be deleted is shown with ~~striketrough~~, new language is underlined)

**Rule 126 through 130 [no changes]**

**Rule 131. Application**

(a) Every applicant must complete and file with the Administrative Office of the Supreme Court an “Application for Independent Redistricting Commission” as specified in the public announcement of each vacancy. The application shall be on a form approved by the Commission.

(b) If the Commission determines that it has not received applications from enough qualified applicants to provide a pool of nominees that complies with constitutional requirements for the composition of the pool, the Commission shall provide public notice soliciting additional applications to allow the Commission to compile a pool of nominees that meets constitutional requirements.

(c) All applications and documents received with respect to the person’s application shall be retained at the Administrative Office of the Supreme Court until a new Independent Redistricting Commission is appointed.

(d) The contents of all applications that relate to the applicant are public information and shall be made available to the public on the Commission’s website. ~~—All information in response to questions contained in the confidential section of the application form shall not be made available to the public to protect the privacy of third parties.~~ To protect the privacy of third parties, the names and contact information of persons listed as references and the names of applicants’ family members and their employers shall be kept confidential. In addition, the applicant’s contact information (residential street address, phone number, and email address) shall be kept confidential.

~~(e) Except as provided hereafter, information provided to the Commission by a third party shall be available to the public. The following information shall be confidential throughout the nomination process.~~

~~(1) Written information provided to the Commission by a third party regarding an applicant, including the third party’s identity, which the third party designates in writing as confidential information;~~

~~(2) All individual Commissioner’s notes that are generated for personal use;~~

~~(3) All procedural emails sent between commissioners.~~

**Rule 132. Screening of Applications and Selection of Nominees**

(a) **Public Notice and Comment:** Names of applicants and the date, place, and time of the Commission meeting to review applications shall be widely disseminated to the public. Comments about applicants must be made in writing or orally at the meeting to review applications. Written

comments must be submitted to the address indicated in the public notice of the meeting and, if feasible, should be submitted at least three (3) working days before the meeting. Comments shall include the name, address, and telephone number of the person submitting the comment. Written comments should not be sent directly to individual Commissioners. The Commission will not consider anonymous comments

**(b) Confidentiality.** Except as provided in these rules, information provided to the Commission by a third party shall be available to the public. On request, for good cause, the Commission may keep confidential the name of a person who submits a comment. In response to a public record request that is received after the Commission is no longer in session, good cause shall be determined by the Chair if not previously determined by the Commission. Unless otherwise provided by these rules or disclosed by the Commission, documents created by Commissioners or staff during the performance of duties provided by these rules are confidential until the nomination process is completed.

**(b)(c) Investigation of Applicants:** As soon as Commissioners receive applications, they may investigate the background and qualifications of applicants. Using the application as a starting point, Commissioners may contact individuals and institutions knowledgeable about the applicant.

**(e)(d) Selection of Nominees:**

(1) *General:* The Commission shall meet for the purpose of deciding which applicants are to be nominated.

(2) *Consideration of Applicants:* The qualifications of each applicant shall be discussed and evaluated. Whether in public or in executive session, the Chair shall read the names of the applicants in alphabetical order and open the meeting to a discussion of that particular applicant's qualifications. After this procedure has been followed for each applicant, the Chair shall open the meeting to a general discussion of the relative qualifications of all the applicants. Each Commissioner shall disclose comments and other information concerning each applicant relied upon by that Commissioner in evaluating that applicant. If confidentiality has been promised to a source, Commission members shall consider whether less weight should be given to the information.

(3) *Discretion to Interview Applicants:* The Commission may interview any or all of the applicants in order to compile a list of nominees to be forwarded to the appointing official(s). At its meeting to review applications, the Commission shall determine whether any of the applicants will be interviewed. In public session, the Chair shall invite Commissioners to nominate applicants to be placed on a tentative list of those to be interviewed. Such a nomination requires the concurrence of one additional Commissioner. The name of each applicant who receives a vote of the majority of Commissioners voting shall be placed on a tentative list. Following this procedure, the tentative list of interviewees may be added to or subtracted from by a public vote until a final list of applicants to be interviewed is determined. If there are no nominations to interview applicants, the Commission shall proceed with selecting nominees pursuant to Paragraph (c)(5) of these procedures.

(4) *Conduct of Interviews:* Selected applicants may be publicly interviewed by the Commission. If interviews are conducted, public notice shall be made in the same manner as described in Paragraph (a), and the public may comment on applicants before the interviews in the same manner as described in Paragraph (a). The Commission shall schedule sufficient time before

each interview to discuss the results of Commissioners' investigations and to determine whether any matters that were disclosed in the course of the investigation should be discussed with the applicant at the interview. A Commissioner may question an applicant about comments made about the applicant for which confidentiality of the source of the comment has been requested so long as the source of the comment is not identified. Upon motion and a majority vote of the Commission, a portion of the interview may occur in executive session unless, after given a choice, the interviewee elects to remain in public session. No material and adverse information about an applicant that is known to a Commissioner prior to the interview may be disclosed to the Commission after the interview occurs.

(5) *Selection of Nominees for Submission to Appointing Official(s):* All voting by the Commission on the nominees to be forwarded to the appointing official(s) shall be in public session. The Chair shall invite Commissioners to nominate applicants to a tentative list for referral to the appointing official(s). Such a nomination requires the concurrence of one additional Commissioner. Each applicant who receives an affirmative vote of the majority of Commissioners voting shall be tentatively listed for referral to the appointing official(s). Following this procedure, with or without an executive session or sessions, the tentative list of nominees may be added to or subtracted from by public vote until a pool of nominees that satisfies constitutional requirements is finalized by public vote of the majority of the Commission members voting for referral to the appointing official(s)

~~(d)~~**(e) Communication after Interview Meetings:** If a Commissioner receives new written information about a nominee after the nominations are referred to the appointing official(s), the Commissioner shall forward the information to the Chair of the Commission and the Chair shall forward the information to the appointing official(s), with a cover memorandum explaining that the information was not submitted in time for consideration by the Commission and therefore not investigated. If the information is verbal, the Commissioner shall advise the source about his or her right to contact the appointing official(s).

### **Rule 133. Transmittal to Appointing Official(s)**

The names of the nominees, listed in alphabetical order, shall be delivered to the appointing official(s) as directed by the Chair. The Chair shall promptly inform the public of the names of the nominees. To facilitate the appointing official's selection, the Commission file concerning each nominee shall be provided when the names are delivered. Notes made by a Commissioner for the Commissioner's individual use, including those that form the basis for the Commissioner's oral report to the Commission, will not be included in the Commission file and may be discarded by the Commissioner after their reference value has been served.